

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA** : **CRIMINAL NO. 06-**\_\_\_\_\_

**v.** : **DATE FILED:** \_\_\_\_\_

**JMG EXCAVATING CO.** : **VIOLATION:**  
18 U.S.C. § 1341 (mail fraud - 1 count)  
18 U.S.C. § 2 (aiding and abetting)

**INFORMATION**

**COUNT ONE**

**THE UNITED STATES ATTORNEY CHARGES THAT:**

At all times material to this information:

1. Defendant JMG EXCAVATING CO. ("JMG") was a construction service business incorporated in Pennsylvania. JMG specialized in construction contracting in transportation and utility industries, including paving, demolition, excavating, utilities, piping, and bridge and railroad construction services.

2. Between in or about August 1997 and in or about February 2004, defendant JMG obtained a series of eight construction contracts from the Southeastern Pennsylvania Transportation Authority ("SEPTA"), totaling approximately \$7,811,880, which required that the defendant comply with the conditions of SEPTA's Disadvantaged Business Enterprise ("DBE") Program.

**SEPTA'S DBE PROGRAM**

3. In or about 1980, the United States Department of Transportation ("USDOT") issued regulations in connection with a program to increase the participation of minority and disadvantaged business enterprises ("DBEs") in federally-funded public construction contracts

(the “DBE Program”). The USDOT delegated the administration of the DBE Program to the city and state agencies that received USDOT construction grant funds.

4. The Federal Transit Administration (“FTA”) was an agency within the USDOT that provided financial assistance in the form of construction grants to transit agencies for the construction and maintenance of transit systems. The FTA required recipients of USDOT construction grants to establish a DBE program, pursuant to which those grant recipients would set specific goals for the percentage of work to be awarded to DBEs, and ensure that good faith efforts were made by general contractors to employ qualified DBE subcontractors.

5. SEPTA received USDOT construction grants through the FTA, and established a DBE Program.

6. As part of its DBE Program, SEPTA allowed general contractors to count toward the attainment of their DBE percentage goals only those funds paid to legitimate DBE companies that performed a “commercially useful function” in the execution of a contract.

7. Under SEPTA’s DBE Program, and in accordance with USDOT regulations, a DBE company performed a “commercially useful function” when it: (a) was responsible for the execution of a distinct element of the work of a contract; (b) carried out its responsibilities by actually performing, managing and supervising the work involved; and (c) furnished all supervision, labor, tools, equipment, materials and supplies necessary to perform that distinct element of the work of the contract.

8. In order to participate in SEPTA’s DBE Program, a company had to be certified as a DBE by SEPTA.

9. In order for a company to be certified as a DBE by SEPTA, it had to demonstrate that: (a) at least 51 percent of the company was owned and controlled by one or

more minorities, women, or socially and economically disadvantaged individuals; (b) those individuals controlled the management and daily business operations of the company; and (c) the company had sufficient resources and employees to fulfill subcontracts.

10. Pursuant to SEPTA's DBE Program and USDOT regulations, a DBE was prohibited from subcontracting work it was awarded in connection with its DBE status, and was required to, among other things: (a) perform the subcontracting work with its own employees and furnish to the contracting governmental agency a certified payroll showing the wages paid to each employee on the job; (b) manage its own work, including supervising, hiring and firing of employees, and perform all administrative functions using personnel responsible to or employed by the DBE at facilities or locations under the control of the DBE; and (c) negotiate prices, arrange delivery of, and pay for, materials required for the subcontracting work.

11. Subcontractor EP ("Sub EP") was a minority-owned construction service business located in Philadelphia, Pennsylvania. Sub EP specialized in excavating and hauling services, and was certified by SEPTA as a DBE.

### **THE SCHEME**

12. From on or about August 1, 1997 through on or about February 14, 2004, in the Eastern District of Pennsylvania and elsewhere, defendant

### **JMG EXCAVATING CO.**

devised and intended to devise a scheme to defraud and to obtain money and property from SEPTA by means of false and fraudulent pretenses, representations and promises.

### **OBJECT OF THE SCHEME**

13. It was the purpose of the scheme for defendant JMG to obtain construction contracts and money from SEPTA by falsely reporting to SEPTA that it was in compliance with SEPTA's DBE requirements and was using an approved DBE subcontractor to perform work on the contract.

### **MANNER AND MEANS**

It was part of the scheme that:

14. Defendant JMG agreed with Sub EP that JMG would list Sub EP as its DBE subcontractor performing trucking services on SEPTA contract documents.

15. On the majority of DBE work represented by defendant JMG to be performed by Sub EP, JMG used its own employees to perform the services.

16. Defendant JMG paid Sub EP a 2.5 percent fee on all DBE work not performed by Sub EP, but billed by JMG to SEPTA as JMG's DBE work.

17. Defendant JMG falsely reported to SEPTA and the USDOT that Sub EP performed required DBE work totaling \$1,277,152.

18. Sub EP endorsed for defendant JMG dual party checks made payable to JMG's suppliers and Sub EP, to make it appear that Sub EP had performed required DBE work.

19. Defendant JMG prepared, and submitted to SEPTA, DBE Utilization Reports which falsely over-stated the DBE work performed by Sub EP.

20. On or about March 27, 2003, in the Eastern District of Pennsylvania,  
defendant

**JMG EXCAVATING CO.,**

for the purpose of executing the scheme described above and attempting to do so, knowingly  
caused to be delivered by the United States Mail or private or commercial interstate carrier, a  
DBE Business Utilization Report to SEPTA that fraudulently indicated a payment for DBE  
services to Sub EP of \$371,481.69.

In violation of Title 18, United States Code, Sections 1341 and 2.

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**PATRICK L. MEEHAN**  
**UNITED STATES ATTORNEY**